

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ella Mintz	Team: Squad #12	CCRB Case #: 201903838	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 04/27/2019 5:30 PM	Location of Incident: Richmond Avenue and Victory Boulevard	Precinct: 121	18 Mo. SOL 10/27/2020	EO SOL 6/13/2021	
Date/Time CV Reported Sat, 05/04/2019 11:32 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 05/04/2019 11:32 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Nathaniel Beck	14800	963866	121 PCT
2. POM Christophe Schiro	15133	956244	121 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Nicholas Cavalotti	10540	960344	121 PCT
2. POF Alexandra Florida	08608	956651	121 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Nathaniel Beck	Abuse: Police Officer Nathaniel Beck stopped the vehicle in which § 87(2)(b) was an occupant.	
B.POM Christophe Schiro	Abuse: Police Officer Christopher Schiro stopped the vehicle in which § 87(2)(b) was an occupant.	
C.POM Nathaniel Beck	Force: Police Officer Nathaniel Beck pointed his gun at § 87(2)(b)	
D.POM Christophe Schiro	Force: Police Officer Christopher Schiro pointed his gun at § 87(2)(b)	
E.POM Christophe Schiro	Abuse: Police Officer Christopher Schiro drew his gun.	
F.POM Nathaniel Beck	Force: Police Officer Nathaniel Beck used physical force against § 87(2)(b)	
G.POM Christophe Schiro	Force: Police Officer Christopher Schiro used physical force against § 87(2)(b)	
H.POM Christophe Schiro	Abuse: Police Officer Christopher Schiro searched the vehicle in which § 87(2)(b) was an occupant.	
I.POM Nathaniel Beck	Abuse: Police Officer Nathaniel Beck frisked § 87(2)(b)	
J.POM Nathaniel Beck	Abuse: Police Officer Nathaniel Beck searched § 87(2)(b)	
K.POM Nathaniel Beck	Abuse: Police Officer Nathaniel Beck failed to provide § 87(2)(b) with a business card.	
L.POM Christophe Schiro	Abuse: Police Officer Christopher Schiro failed to provide § 87(2)(b) with a business card.	

### Case Summary

On May 4, 2019, § 87(2)(b) filed this complaint on the CCRB's call processing system.

On April 27, 2019 at approximately 5:36PM, Police Officers Nathaniel Beck and Christopher Schiro, of the 121<sup>st</sup> Precinct, stopped § 87(2)(b)'s vehicle at the intersection of Richmond Avenue and Victory Boulevard in Staten Island (**Allegations A and B- Abuse of Authority:** § 87(2)(g) PO Beck pointed his gun at § 87(2)(b) (**Allegation C- Force:** § 87(2)(g) PO Schiro pointed his gun at § 87(2)(b) (**Allegation D- Force:** § 87(2)(g) PO Schiro drew his gun (**Allegation E- Abuse of Authority:** § 87(2)(g) PO Beck forcibly took § 87(2)(b) down to the ground (**Allegation F- Force:** § 87(2)(g) PO Schiro used physical force against § 87(2)(b) (**Allegation G-Force:** § 87(2)(g) PO Schiro searched § 87(2)(b)'s vehicle (**Allegation H- Abuse of Authority:** § 87(2)(g) PO Beck frisked § 87(2)(b) (**Allegation I- Abuse of Authority:** § 87(2)(g) PO Beck searched § 87(2)(b) (**Allegation J- Abuse of Authority:** § 87(2)(g) PO Beck and PO Schiro failed to provide § 87(2)(b) with their business cards (**Allegations K and L- Abuse of Authority:** § 87(2)(g)

§ 87(2)(b) was not arrested or summonsed as a result of this incident.

The investigation obtained BWC footage from PO Beck, PO Schiro, and from Police Officers Nicholas Cavallotti and Alexandra Florida, who are also assigned to the 121<sup>st</sup> Precinct (Board Reviews 01, 02, 03, 04, video summaries located in Board Reviews 05, 06, 07, 08). There is no other video footage capturing this incident.

### Findings and Recommendations

**Allegation A-Abuse of Authority: Police Officer Nathaniel Beck stopped the vehicle in which § 87(2)(b) was an occupant.**

**Allegation B-Abuse of Authority: Police Officer Christopher Schiro stopped the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed among all parties that PO Beck and PO Schiro stopped § 87(2)(b)'s vehicle at approximately 5:36PM on April 27, 2019 at the intersection of Victory Avenue and Richmond Boulevard in Staten Island. It is further undisputed that § 87(2)(b) was compliant in pulling over his vehicle and that the officers pulled up directly behind § 87(2)(b)'s vehicle.

§ 87(2)(b) a 5'6" Hispanic male, stated that at the time of the incident, he was wearing a blue hooded sweatshirt and black jeans (Board Review 09). § 87(2)(b) was alone and was driving a 2012 white GMC cargo van. § 87(2)(b) was coming from § 87(2)(b) in Staten Island, where he had been doing work on his pool.

According to Event #§ 87(2)(b) at 5:17PM on April 27, 2019, § 87(2)(b) called 911 and stated that he saw someone run out of his house, located at § 87(2)(b) in Staten Island (Board Review 10). A Google Maps search revealed that the distance between § 87(2)(b) and the intersection of Victory Boulevard and Richmond Avenue is approximately § 87(2)(b) (Board Review 13). § 87(2)(b) noted that he was missing his radio, jewelry box, and keyboard. § 87(2)(b) stated that he saw the suspect, described as a Hispanic male about 5'8"-5'9" wearing a blue hooded sweatshirt and black jeans, get into a white GMC van with possible graffiti on the side. § 87(2)(b) noted that he did not see any weapons and that he saw the suspect drive off toward Victory Avenue.

§ 87(2)(g) The officers said that they responded to a call of a burglary. It came over the radio that the homeowner described the suspect as a Hispanic male wearing a blue sweatshirt, who was driving a

white GMC van with New York plates and graffiti and stickers on the sides of the van. Neither officer heard anything about weapons over the radio. At approximately 5:36PM in the vicinity of Victory Avenue and Richmond Boulevard, which according to PO Beck, is approximately a quarter-mile away from the home that was burgled, the officers observed § 87(2)(b) in his vehicle, which matched the description. The officers observed that § 87(2)(b) was a Hispanic male wearing a blue sweatshirt. The officers jointly decided to pull § 87(2)(b) over.

The BWC footage showed that § 87(2)(b) was driving a white GMC van; there was no graffiti on the side of the van (Board Review 01, summary located in Board Review 05). § 87(2)(b) was wearing a blue hooded sweatshirt and black jeans.

Upon observing a vehicle close in proximity to the time and place of the commission of a crime that matched the description of the vehicle and its occupants provided by a witness of the crime, officers were justified in stopping the vehicle because they had the requisite reasonable suspicion to do so. People v. Reid, 135 A.D.2d 752 (Board Review 14).

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**Allegation C- Force: Police Officer Nathaniel Beck pointed his gun at § 87(2)(b)**

**Allegation D- Force: Police Officer Christopher Schiro pointed his gun at § 87(2)(b)**

**Allegation E- Abuse of Authority: Police Officer Christopher Schiro drew his gun.**

§ 87(2)(b) stated that after he pulled over, a male voice over the loudspeaker (identified by the investigation as PO Beck) instructed him to roll his window down, lower his driver's side window, turn off his car, and place his keys on top of his vehicle. § 87(2)(b) followed all of the instructions. PO Beck instructed § 87(2)(b) to slowly get out of the car. § 87(2)(b) exited the car and observed three to four other marked police cars come to the location. PO Beck told § 87(2)(b) to walk backwards toward the officers' vehicle, which was parked behind § 87(2)(b)'s vehicle. § 87(2)(b) looked over his shoulder because he was confused for the reason for the stop and observed PO Beck and PO Schiro pointing their guns at him. PO Beck told § 87(2)(b) to turn around, which he did.

PO Beck's BWC footage shows that he had his gun pointed at § 87(2)(b) for ten seconds, from 17:39:18 to 17:39:28 in the recording (Board Review 01, summary located in Board Review 05). While pointing his gun at § 87(2)(b) PO Beck twice requested that § 87(2)(b) exit the vehicle.

PO Schiro's BWC footage does not capture him pointing his gun at § 87(2)(b) (Board Review 02, summary located in Board Review 06)

In their CCRB interviews, PO Beck and PO Schiro both stated that this stop constituted a "felony car stop." PO Beck stated that in the Police Academy, he was trained that a felony car stop is when officers conduct a vehicle stop in connection with a violent crime. In a felony car stop, officers give "loud verbal commands" to the individual inside the vehicle. The officers are then trained to exit their car "at gunpoint," retreat to the back of their vehicle, and verbally command the driver to put the car in park, take the keys out of the ignition, and exit the car with their hands out. A burglary, regardless of whether weapons are involved, is considered a violent crime. PO Schiro stated that

there is a higher degree of danger in a felony car stop; he does not draw his weapons during a normal car stop but does so in a felony car stop for his own safety.

PO Beck acknowledged pointing his gun at § 87(2)(b). PO Beck stated that he did so for his own safety. PO Beck believed that there was a possibility that § 87(2)(b) may have been armed because of the felony crime associated with him and his vehicle.

PO Schiro stated that he approached § 87(2)(b)'s vehicle with his gun drawn. PO Schiro did not believe that he pointed the gun at § 87(2)(b) the reason that PO Schiro believed this was because PO Schiro went to the passenger's side of the van. PO Schiro went to the passenger's side of the van because he wanted to see if there was anyone else in the vehicle.

Patrol Guide Procedure 221-01 states that the decision to display and draw a firearm should be based on an articulable belief that the potential for serious physical injury is present (Board Review 15).

Police officers may draw and point their guns as a precautionary measure and safety response. People v. Livigni, 88 A.D.2d. 386 (Board Review 16).

Patrol Guide Procedure 212-11 notes that robbery and burglary are considered violent crimes (Board Review 17).

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**Allegation F-Force: Police Officer Nathaniel Beck used physical force against § 87(2)(b).**

§ 87(2)(b) stated that PO Beck told him to exit the car "slowly" and stated that after he exited the car and turned around, he felt an officer come up from behind him and grab his arm. § 87(2)(b) assumed that this officer was either PO Schiro or PO Beck because they were the sole officers behind him. The officers then pushed him down so he was lying face down on the ground. § 87(2)(b) gave the officers his hands because he wanted the officers to handcuff him quickly. § 87(2)(b) stated that he was compliant. § 87(2)(b) received a bruise to his left arm as a result of the officers taking him down to the ground. (Board Review 18).

At 17:39:11 in his BWC footage, PO Beck exits the vehicle and says, "Driver, step out of the car" (Board Review 01, summary located in Board Review 05). The door to § 87(2)(b)'s vehicle does not open. At 17:39:18, PO Beck points his gun at the driver's side door and says, "Driver, step out of the car with your hands up." At 17:39:21, the driver's side door is open and § 87(2)(b) is seen with his hands up; he is not fully out of the car. PO Beck tells him to get his hands up and to keep them up. PO Beck continues to approach § 87(2)(b) and tells him to get his hands up. PO Beck says, "Step out of the car." § 87(2)(b) wearing a blue sweatshirt, is visible in the bottom center

of the footage. The driver's side door to his van is open and he has his hands outstretched in front of him. PO Beck walks toward § 87(2)(b) with both hands still on his gun and says, "Keep your hands up! Keep your hands up! Get out!" § 87(2)(b) has one foot hanging out of the driver's seat door. At 17:39:29, PO Beck puts down his gun and runs toward § 87(2)(b) "Get out of the car!" PO Beck grabs the back of § 87(2)(b)'s hooded sweatshirt and pulls him down to the ground in a quick motion so § 87(2)(b) is lying on his stomach. § 87(2)(b) asks, "What did I do? What did I do?" PO Beck and PO Cavalotti handcuff § 87(2)(b).

In his CCRB interview, PO Beck stated that § 87(2)(b) was "very slow" to get out of the car. PO Beck opted to forcibly take § 87(2)(b) down to the ground because § 87(2)(b) was slow to exit the vehicle and because he could not see § 87(2)(b)'s hands. PO Beck suspected that § 87(2)(b) may have been armed due to the nature of the call. PO Beck took § 87(2)(b) down to the ground by grabbing his shoulder and pulling him down so he was face down on the ground. PO Beck did not use any physical force against § 87(2)(b) apart from pulling him down to the ground.

PO Beck was shown his BWC footage during his CCRB interview. The video was paused at 17:39:24 in the recording where the video depicts § 87(2)(b)'s hands in plain view. PO Beck acknowledged that § 87(2)(b) showed his hands in the video but stated that it did not refresh his recollection of actually seeing § 87(2)(b)'s hands at the time of the incident. The undersigned played the video and paused again at 17:39:27 in the recording where the video again depicts that § 87(2)(b)'s hands were in plain view. PO Beck did not recall seeing this at the time. PO Beck stated that § 87(2)(b) was not doing anything that caused him to fear for his safety but that he took him down due to the nature of the call and that § 87(2)(b) whose right side was not visible prior to PO Beck pulling him from the vehicle, could have pulled out a gun within "half a second."

Patrol Guide Procedure 221-01 states that in all circumstances, the use of force must be reasonable under the circumstances (Board Review 15). In order to determine if a use of force is reasonable, officers must consider the nature severity of the crime/circumstances, the actions taken by the subject, the duration of the subject's actions, and the immediacy of the perceived threat or harm to the subject, MOS, or bystanders.

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**Allegation G- Force: Police Officer Christopher Schiro used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that PO Schiro participated in pushing him down to the ground.

PO Schiro's BWC footage shows that he never made physical contact with § 87(2)(b)

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**Allegation H-Abuse of Authority: Police Officer Christopher Schiro searched the vehicle in which § 87(2)(b) was an occupant.**

At 17:39:08 in his BWC footage, PO Schiro tells PO Beck, “I’m going to clear” and goes to the passenger’s side of § 87(2)(b)’s van. PO Schiro opens the passenger’s side door and points his gun inside the vehicle for less than a second. No one is observed in the passenger’s seat. PO Schiro then walks quickly to the back of the van and joins PO Beck. At 17:39:25 in the timestamp, PO Schiro says, “I’m going to clear the van, make sure no one else is in there.” PO Schiro goes to the driver’s side door of the van and points his gun through the open door. PO Schiro leans into the car, crossing the plane of the vehicle with his body. PO Schiro is inside the van from 17:39:27 to 17:39:30 in the recording. There are a few items -- gas and coconut water -- inside the van, but no one else is observed. PO Schiro then goes to § 87(2)(b) and PO Beck. At 17:39:56 in the recording, PO Schiro opens the back of the van, looks inside for approximately two seconds and goes over the radio to ask a follow officer about their estimated time of arrival.

In his CCRB interview, PO Schiro initially only recalled opening the passenger’s side door of the vehicle. PO Schiro stated that he did this because he wanted to see if there was anyone else in the van. His search determined that there was not. PO Schiro was shown his BWC footage. The video was stopped at 17:39:59 in the internal timestamp. PO Schiro was asked what he meant by “clearing the van,” And he explained that this entailed making sure no one else is in the van. PO Schiro was asked whether he did this when he was at the passenger’s side door during the beginning of the interaction and why he was doing it again through the driver’s side door. PO Schiro stated that he guessed that when he went to the passenger’s side door he did not see the back of the van. PO Schiro stated that he could see approximately 80% of the van through the passenger side window. PO Schiro acknowledged that the video showed him opening up the back door of § 87(2)(b)’s van. PO Schiro stated he did this for his safety because he wanted to make sure that no one else was in the vehicle. PO Schiro did not know what was stolen in the alleged burglary. PO Schiro was not looking for any stolen items when he was clearing the van.

An officer acting on reasonable suspicion that criminality is afoot based on the articulable basis to fear for their own safety may intrude upon the person or personal effects of the suspect with a limited vehicle search only to the extent that is actually necessary to protect himself from harm while he conducts an inquiry. People v. Torres, 74 N.Y.2d 224 (Board Review 19).

§ 87(2)(g)

**Allegation I-Abuse of Authority: Police Officer Nathaniel Beck frisked § 87(2)(b)**

§ 87(2)(b) did not allege that he was frisked.

PO Beck stated that after § 87(2)(b) was handcuffed, he frisked and searched § 87(2)(b) due to suspicion that he had committed a violent crime.

The BWC footage does not capture PO Beck frisking § 87(2)(b)

The stop report prepared for § 87(2)(b) notes that a frisk and search were conducted on the basis of a “violent crime” (Board Review 20).

Given the geographical and temporal proximity to both the scene of the armed robbery and the area where shots were fired and the defendant’s physical appearance upon being approached by officers, the court found that the police possessed reasonable suspicion that the defendant had committed the crime and were therefore authorized to frisk him. People v. McClain, 145 A.D. 3d 1192 (Board Review 21).

§ 87(2)(g)

**Allegation J-Abuse of Authority: Police Officer Nathaniel Beck searched § 87(2)(b)**

§ 87(2)(b) stated that after he was handcuffed, multiple officers asked him if he had ID on his person. § 87(2)(b) told them that he had ID. The officers did not ask § 87(2)(b) where his ID was but an officer placed his hand inside the pockets of his hooded sweatshirt and retrieved § 87(2)(b) s wallet from his left front pants pocket. The officer examined his ID.

PO Beck stated that after § 87(2)(b) was handcuffed, he frisked and searched § 87(2)(b) because § 87(2)(b) was stopped due to suspicion of a violent crime. PO Beck stated that this occurred prior to being informed that § 87(2)(b) was not the person wanted for the burglary. PO Beck also used § 87(2)(b) s identification, which he obtained from his wallet inside his pocket, to complete the stop report that he prepared for him.

None of the BWC footage captures PO Beck frisking § 87(2)(b). At 17:41:01 in PO Schiro’s BWC footage, a voice over the radio states, “It’s negative” in reference to the show-up. Immediately afterwards, PO Beck asks § 87(2)(b) if he has ID on him. § 87(2)(b) says, “Yeah, yeah, of course, my wallet’s right here.” § 87(2)(b) then shifts his body toward PO Beck and looks down at his sweatshirt. § 87(2)(b) says again, “My wallet’s right here.” PO Beck reaches in and obtains the wallet from § 87(2)(b) s pocket. § 87(2)(b) says, “My card is in there too.” PO Schiro then tells § 87(2)(b) that he is going to uncuff him. PO Beck takes § 87(2)(b) s identification out of his wallet.

The stop report prepared for § 87(2)(b) notes that a frisk and search were conducted on the basis of a “violent crime” (Board Review 20).

A search after a frisk is to be conducted when an officer feels an object during the frisk that an officer reasonable believes to be a weapon. An officer can arrest and search an individual when the officer has probable cause to believe that the person has committed a crime. People v. Debour, 40. N.Y.2d 210 (Board Review 25).

Consent to search must be a free and unconstrained choice. Official coercion, even if deviously subtle, nullifies apparent consent. People v. Gonzalez, 39 N.Y.2d 122 (Board Review 26).

Patrol Guide Procedure 212-11 notes that when preparing a Stop Report, an officer can mark “Refused” in the appropriate space, if the person stopped refuses to identify himself (Board Review 17).

§ 87(2)(g)

§ 87(2)(g)

**Allegation K-Abuse of Authority: Police Officer Nathaniel Beck failed to provide § 87(2)(b) with a business card.**

**Allegation L-Abuse of Authority: Police Officer Christopher Schiro failed to provide § 87(2)(b) with a business card.**

It is undisputed that neither PO Beck nor PO Schiro provided § 87(2)(b) with business cards at the conclusion of the stop.

§ 87(2)(b) stated that after he was handcuffed, a voice over one of the officer's radios stated, "That's not him." PO Schiro told § 87(2)(b) "Sorry, man, it was a mistake" and uncuffed Mr. him. PO Schiro initially told § 87(2)(b) that he was going to give him a card but was instead going to write a report regarding the incident. The officers then left. § 87(2)(b) later went to the stationhouse to try to obtain the report that PO Schiro spoke about was told that a report did not exist. § 87(2)(b) was not arrested or summonsed.

At 17:41:22 in PO Schiro's BWC footage, PO Schiro tells § 87(2)(b) that they are going to prepare a stop report for him. The BWC footage does not capture any mention of business cards and none of the officers provide their names or shield numbers to § 87(2)(b).

In their CCRB interviews, both PO Beck and PO Schiro testified that they told § 87(2)(b) on the scene that they were going to prepare a stop report for him. The officers acknowledged that civilians are not provided with copies of stop reports. Neither officer provided § 87(2)(b) with a business card. According to their understanding of the Patrol Guide, they were not required to issue § 87(2)(b) business cards unless he explicitly asked for them.

Patrol Guide Procedure 203-09 states that officers must offer business cards when they conduct law enforcement activities such as stops where an officer has an individualized reasonable suspicion that the person has committed, is committing, or is about to commit a crime, and where a reasonable person would not feel free to end the encounter, and where a frisk has been conducted (Board Review 22). An officer does not have to offer a business card in cases where a summons is issued or an arrest is made.

§ 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- This is the first complaint in which § 87(2)(b) has been a party.
- Police Officer Nathaniel Beck has been a member of service for two years and has not been a subject officer in any closed CCRB complaints. § 87(2)(g)
- Police Officer Christopher Schiro has been a member of service for five years and has been a subject in two CCRB complaints and two allegations, none of which have been substantiated. § 87(2)(g)

#### **Mediation, Criminal, and Civil Histories**

**CCRB Case # 201903838**



- This case was not suitable for mediation.
- As of October 28, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim filed in regards to this incident (Board Review 23).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature                      Print Title & Name                      Date

Squad Leader: \_\_\_\_\_  
Signature                      Print Title & Name                      Date

Reviewer: \_\_\_\_\_  
Signature                      Print Title & Name                      Date